

1 [INSERT NAME AND ADDRESS]

2
3 Telephone:
4 Facsimile:

5 Attorneys for Trustee
(Or Debtor in Possession)

6
7 UNITED STATES BANKRUPTCY COURT
8 _____ DISTRICT OF CALIFORNIA
9 (_____ DIVISION)
10

11 In re

12 JOHN DOE,

13 Debtor.

) CASE NO.

) Chapter 7 (or 11)

) ORDER AUTHORIZING TRUSTEE
) [DEBTOR IN POSSESSION] TO SELL REAL
) PROPERTY FREE AND CLEAR OF LIENS

) Hearing

) Date:
) Time:
) Place:

14
15
16 KAYE SCHOLER llp
17 _____

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19
20 On the date and at the time set forth above, a hearing was held before the undersigned United
21 States Bankruptcy Judge in the above-captioned chapter ____ case of John Doe (the “Debtor”) upon
22 the “Motion to Sell Real Property Free and Clear of Liens” (the “Motion”) filed by _____,
23 [the trustee (the “Trustee”)] [or] [John Doe, in his capacity as debtor in possession (hereinafter
24 referred to in such capacity as the “Trustee”)], there appearing _____, counsel to
25 the Trustee, and other parties in interest as set forth in the recorded transcript of the hearing on the
26 Motion.

27 Having given due consideration to the Motion, the declarations and other evidence submitted
28 in support of the Motion, [any opposition and/or response filed], the record and proceedings in the

1 above-captioned case, the arguments of counsel [and other interested parties] at the hearing, and for
2 other good cause shown, the Court hereby finds, as a matter of fact, and concludes, as a matter of
3 law, that:

4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 to approve the sale
5 of the property (the “Property”) which is the subject of the Motion free and clear of those liens,
6 encumbrances, claims and interests identified in this Order, and to authorize the Trustee on behalf of
7 the estate in the above-captioned case (the “Estate”) to enter into and perform in accordance with the
8 [insert title of sale agreement] dated [insert date], including the modifications thereto, if any, set
9 forth in the record of the hearing on the Motion (the “Agreement”), [a copy of which is attached
10 hereto as Exhibit “A”]. The Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N),
11 and (O). The statutory predicates for the relief requested in the Motion are 11 U.S.C. §§ 105 and
12 363, and Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) 2002, 6004 and 9014.

13 2. All objections, if any, to the Motion and to the approval of the Agreement, including
14 the transactions contemplated thereby, have been withdrawn, resolved or overruled.

15 3. The Property is situated in _____, County of _____,
16 State of _____, described more fully as follows: [insert here or attached as Exhibit
17 “B”].

18 4. Record title to the Property is vested in _____ (the “Record Owner”).

19 5. As set forth in the declarations of service filed with this Court in connection with the
20 Motion, notice of the hearing on the approval of the Motion (the “Notice”) was duly served on
21 (a) the Debtor and [his] counsel, (b) all creditors and interested parties [or] [those creditors and
22 interested parties, including parties requesting special notice, as authorized and directed in prior
23 orders of this Court limiting notice pursuant to Bankruptcy Rule 2002(i)], (c) each entity known to
24 the Trustee to assert a lien, encumbrance or other interest in, or claim to, the Property to be affected
25 by this Order, and (d) the Office of the United States Trustee, all in accordance with Bankruptcy
26 Rules 2002(a)(2), 2002(c)(1), 2002(i), 2002(k), 6004(a) and 6004(c). Each entity known to the
27 Trustee to assert a lien, encumbrance, claim or other interest in or to the Property to be affected by
28

1 this Order was also served with a complete copy of the Motion, and all supporting declarations and
2 pleadings filed by the Trustee in connection with the Motion.

3 6. The Notice complied in all respects with the requirements of the Bankruptcy Code
4 and the Bankruptcy Rules; fully and adequately described the relief requested in the Motion and set
5 forth the means by which the Motion, and all supporting declarations and pleadings filed by the
6 Trustee in connection with the Motion, could be obtained promptly by a party in interest; provided
7 fair and reasonable notice under the circumstances of this case with respect to the deadlines and
8 procedures for objecting to the relief requested in the Motion; and set forth the time, date and place
9 for the hearing on the Motion.

10 7. [The proposed sale does not entail a sale of all or substantially all of the Debtor's
11 assets] [or] [The proposed sale involves all or substantially all of the Debtor's assets; accordingly,
12 pursuant to Bankruptcy Rule 2002(d)(3), notice of the proposed sale has been provided to the
13 Debtor's equity security holders].

14 8. The Property is allegedly subject to the liens, encumbrances and other interests of
15 record as set forth in the preliminary report/title commitment (the "Title Report") issued by

16 _____ as of _____ attached to the Declaration of

17 _____ filed in support of the Motion, including, without limitation, the following:

Nature of Interest	Name of Holder	Amount Scheduled by Debtor	Amount Known to Declarant
1st Deed of Trust:			
2nd Deed of Trust:			
3rd Deed of Trust:			
Judgment Liens:			
Taxes:			
Other:			

1 [Note: Use sample Paragraphs 9 through 13, as appropriate, to describe the basis for sale free
2 and clear as to each lien or interest holder identified in Paragraph 8 above, repeating each as often as
3 required and deleting the unnecessary paragraphs].

4 9. Within the meaning of 11 U.S.C. § 363(f)(1), [insert applicable nonbankruptcy law]
5 permits the sale of the Property free and clear of any and all interests of [lien or interest holder] in
6 the Property, including, without limitation, those liens, encumbrances or interests of such party listed
7 in Paragraph 8 above.

8 10. Within the meaning of 11 U.S.C. § 363(f)(2), [lien or interest holder] has consented to
9 the sale of the Property free and clear of any and all its liens, encumbrances or interests in the
10 Property, including, without limitation, those liens, encumbrances and interests of such party listed
11 in Paragraph 8 above.

12 11. Within the meaning of 11 U.S.C. § 363(f)(3), the purchase price of the Property is
13 greater than the aggregate value of all liens on the Property.

14 12. Within the meaning of 11 U.S.C. § 363(f)(4), the interests of [lien and interest holder]
15 in the Property, including, without limitation, those liens, encumbrances or other interests of such
16 party listed in Paragraph 8 above, are subject to bona fide dispute based on the following: [state
17 nature of bona fide dispute].

18 13. Within the meaning of 11 U.S.C. § 363(f)(5), [Lien or Interest holder] can be
19 compelled, in a legal or equitable proceeding, to accept a money satisfaction of its liens,
20 encumbrances or interests in the Property, including, without limitation, those liens, encumbrances
21 and interests of such party listed in Paragraph 8 above.

22 14. The Trustee has engaged in fair and reasonable marketing, advertising and other sale
23 efforts and procedures in connection with the sale of the Property, which efforts and procedures have
24 enabled the Estate to obtain a fair and reasonable price for the Property under the circumstances of
25 this case. In connection with the proposed sale, the Trustee has complied with all sale procedures
26 established or required by this Court.

27 15. The highest and best offer to purchase the Property was the one received from
28 _____ (the "Purchaser") to purchase the Property for a purchase price of \$_____ on

1 the terms and conditions set forth in the Agreement, including the following modifications thereto as
2 set forth on the record at the time of the hearing on the Motion:

3
4 a. [insert changes to the terms of the Agreement agreed to on the record]

5 b.

6 16. The Purchaser is unrelated to the Debtor and the Trustee. [Otherwise, set forth
7 connections, if any, among the parties in interest and court approval thereof.] The Agreement was
8 negotiated, proposed, and entered into by the parties without collusion, in good faith, and from
9 arm's-length bargaining positions. Neither the Trustee nor the Purchaser have engaged in any
10 conduct that would cause or permit the Agreement, or the transactions contemplated thereby, to be
11 invalidated or avoided under 11 U.S.C. § 363(n). Accordingly, upon consummation of the sale
12 transaction contemplated by the Agreement, the Purchaser will be a buyer in "good faith" within the
13 meaning of 11 U.S.C. § 363(m), and, as such, is entitled to the protections afforded thereby.

14 17. The terms and conditions of the sale transaction as provided for in the Agreement are
15 fair and reasonable; entry into the Agreement on behalf of the Estate is a sound exercise of the
16 Trustee's reasonable business judgment; and, the sale transaction contemplated by the Agreement is
17 in the best interests of creditors, interest holders and the Estate.

18 18. [If the parties intend to include a provision to waive the ten-day stay period provided
19 by Rule 6006(g), insert a finding, based upon evidence submitted to the Court, as to why the sale
20 transaction must be closed prior to the expiration of the ten-day stay period. Title industry urges
21 caution that (1) compelling reasons for such a waiver be clearly stated in this paragraph (intended to
22 be finding of fact to support court's action should the waiver be called into question in a subsequent
23 appeal), and (2) that the title insurer be consulted prior to proceeding with this approach to determine
24 whether, to what extent and under what conditions, the title insurer will rely on an order waiving the
25 stay period]

26 Based on the record in this case, the findings of fact and conclusions of law set forth above
27 and stated on the record pursuant to Bankruptcy Rules 9014 and 7052, and good cause appearing
28 therefor,

1 **IT IS HEREBY ADJUDGED AND ORDERED** that:

2 A. The Motion is granted as set forth herein;

3 B. The terms, conditions, and transactions contemplated by the Agreement are hereby
4 approved in all respects, and the Trustee is hereby authorized under 11 U.S.C. §§ 105(a) and 363(b),
5 (c), (f) and (m) to sell the Property free and clear of those liens, claims, encumbrances and interests
6 set forth below to the Purchaser on the terms and conditions provided in the Agreement;

7 C. The Trustee is hereby authorized, empowered, and directed to (1) perform under,
8 consummate, and implement the Agreement, (2) execute all additional instruments and documents
9 that may be reasonably necessary or desirable to implement the Agreement and the transactions
10 contemplated thereby, (3) take all further actions as may be necessary or appropriate for the purposes
11 of assigning, transferring, granting, conveying, encumbering or transferring the Debtor's property as
12 contemplated by the Agreement, and (4) take such other and further steps as are contemplated by the
13 Agreement or reasonably required to fulfill the Trustee's obligations under the Agreement, all
14 without further order of the Court. (_____ is hereby authorized to execute all
15 documents in connection with the sale transaction approved hereby on behalf of the Trustee);

16 D. The sale of the Property shall be free and clear of the ownership interests of the
17 Record Owner, and [his] predecessors and successors in interest; any unrecorded equitable or legal
18 interests in the Property asserted by any person or entity, or their respective predecessors and
19 successors in interest, unless such interests would be superior to the rights of the Trustee under 11
20 U.S.C. § 544(a)(3); the claims or interests asserted by any person or entity, or their respective
21 predecessors and successors in interest, against the Estate which do not constitute liens against or
22 interests in the Property; and the claims or interests asserted by any person or entity, or their
23 respective predecessors and successors in interest, evidenced by the liens, encumbrances and
24 interests of record set forth below:

- 25 1. [List liens, encumbrances and interests subject to sale free and clear]
26 2.
27 3.

1 Except as authorized for payment hereby, each lien, encumbrance or interest identified above shall
2 attach, as adequate protection to the holder thereof pursuant to 11 U.S.C. § 363(e), to the net
3 proceeds of sale, after (i) payment of all costs of sale, and (ii) satisfaction of those liens and
4 encumbrances authorized for payment hereby, with the same extent, validity and priority, if any, as
5 such lien, encumbrance, or interest now has with respect to the Property, subject to any and all
6 defenses, offsets, counterclaims and/or other rights of any party relating thereto;

7 E. The Trustee is hereby authorized to pay directly from the escrow all amounts due
8 which are secured by the following liens and encumbrances;

- 9 1. [Real Property Taxes];
- 10 2. [Undisputed deeds of trust, etc.];

11 F. At the close of escrow of the sale approved by this Order, the Trustee is authorized to
12 pay from the sale proceeds a broker's commission to _____ in an amount equal to
13 _____% of the sale price;

14 G. The Trustee is hereby authorized to pay all other reasonable and customary escrow
15 fees, recording fees, title insurance premiums, and closing costs necessary and proper to conclude the
16 sale of the Property;

17 H. This Court shall and hereby does retain jurisdiction to (1) enforce and implement the
18 terms and provisions of the Agreement, all amendments thereto, any waivers and consents
19 thereunder, and any other supplemental documents or agreements executed in connection therewith;
20 (2) compel delivery and payment of the consideration provided for under the Agreement; (3) resolve
21 any disputes, controversies or claims arising out of or relating to the Agreement; and (4) interpret,
22 implement, and enforce the provisions of this Order.

23 I. [Notwithstanding Bankruptcy Rule 6004(g), this Order shall be effective
24 [immediately] or [___ days after its entry absent a stay pending appeal]];

25 J. Pursuant to 11 U.S.C. § 363(m), absent a stay of this Order pending appeal, the
26 reversal or modification on appeal of this Order, or any provision thereof, shall not affect the validity
27 of the sale transaction approved hereby which is consummated prior to such stay, reversal or
28 modification on appeal; and

1
2 K. The validity of the sale approved hereby shall not be affected by the appointment of a
3 trustee or successor trustee, the dismissal of the above-captioned case, or its conversion to another
4 chapter under title 11 of the United States Code.

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6 DATED:

UNITED STATES BANKRUPTCY JUDGE

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16 KAYE SCHOLER llp
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